

**REMARKS**

Claims 1, 3-4, 6-16, and 18 are pending. By this Amendment, Applicant amends claims 1 and 13-15 for clarity. Applicant respectfully requests reconsideration and prompt allowance of the pending claims at least in light of the following remarks.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not raise any new issue requiring further search and/or consideration, as the amendments amplify issues previously discussed throughout prosecution and simply clarify a feature previously discussed; (c) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (e) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to rejections first raised in the final rejection. Entry of the amendments is thus respectfully requested.

The Office Action rejects claims 1, 3, 4, 6-10, 12-16, and 18 under 35 U.S.C. §103(a) over U.S. Patent No. 5,171,254 to Sher in view of U.S. Patent No. 3,943,981 to De Brabander. Applicant respectfully traverses the rejection.

In particular, the combined references at least fail to teach or suggest "a connecting portion that connects the holding portion and the eyelid opener portion, the connecting portion including an elastic member so that a position of the holding portion relative to the eyelid opener portion and the eyeball is continuously adjustable during surgery without canceling a connection state of the eyelid opener portion and the holding portion," as recited in claim 1.

As acknowledged by the Office Action, Sher fails to disclose, teach, or suggest an elastic connecting portion, but briefly discloses the use of hook and loop fasteners. The Office Action then alleges that De Brabander makes up for the deficiency of Sher by

disclosing a hook and loop fastener that has elastic properties. However, this reasoning is flawed for at least two reasons.

First, although Sher discloses the use of a hook and loop faster, it does not contemplate, and in fact teaches away from, the use of an elastic hook and loop fastener. The primary purpose of the mechanical attachment in Sher is that "regardless of the means utilized the important feature is that the fixation ring be able to be secured to the speculum once the ring has been properly positioned on they eye and the eye is in its proper orientation" (C3/L21-27, emphasis added). This feature is so important it is even reflected in the title of Sher, "EYE FIXATION DEVICE" (emphasis added). Thus, the skilled artisan would have immediately recognized that the use of an elastic hook and loop closure is directly contrary to the primary purpose of the mechanical attachment in Sher.

Second, even if the skilled artisan would have been motivated to use an elastic hook and loop closure based on the alleged teaching of De Brabander (which Applicant traverses above), the fastener of De Brabander is not so elastic that it would permit the position of the holding portion to be "continuously adjustable during surgery without canceling a connection state of the eyelid opener portion and the holding portion," as required by claim 1. Specifically, the elasticity of the resilient supports (14, 30) in the hook in loop fastener of De Brabander is inapplicable to the device of Sher since the supports would have to be fixed to the attachments plates 66 and surface 26 respectively. Furthermore, any elasticity that might exist by virtue of the hooks (15-18) or the loops (31-36) would not be sufficient to permit continuous adjustability during surgery.

Therefore, the combination of Sher and De Brabander fails to teach the features of claim 1 Further, claims 3, 4, 6-10, 12-16, and 18 are patentable for at least the reasons that claim 1 is patentable, as well as for the additional features they recite. Applicant respectfully requests withdrawal of the rejection.

Finally, as claim 11 has not been rejected, Applicant assumes that claim 11 is allowed.

Applicant respectfully requests allowance of claim 11.

In view of at least the foregoing, Applicant respectfully submits that this application is in condition for allowance. Applicant earnestly solicits favorable reconsideration and prompt allowance of the pending claims.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, Applicant invites the Examiner to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

James A. Oliff  
Registration No. 27,075

Jesse O. Collier  
Registration No. 53,839

JAO:JOC/lbg

Date: May 14, 2007

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 19928**  
**Alexandria, Virginia 22320**  
**Telephone: (703) 836-6400**

DEPOSIT ACCOUNT USE  
AUTHORIZATION  
Please grant any extension  
necessary for entry;  
Charge any fee due to our  
Deposit Account No. 15-0461